
Judiciary Committee

HB 1829

Title: An act relating to records of conviction for misdemeanor and gross misdemeanor offenses.

Brief Description: Adjusting provisions relating to records of conviction.

Sponsors: Representatives Appleton, Lantz, Lovick, Hasegawa, Flannigan, Moeller, Darneille, McCoy and Simpson.

Brief Summary of Bill

- Permits a court to seal an applicant's misdemeanor or gross misdemeanor criminal record that has been vacated without the applicant demonstrating compelling circumstances.
- Removes the requirement that a record may not be vacated if the applicant has ever had the record of another conviction vacated.
- Limits the prohibition on vacating records of applicants who have been convicted of a new crime.

Hearing Date: 2/15/05

Staff: Erik Van Hagen (786-5793).

Background:

In 2001, the Legislature permitted misdemeanor and gross misdemeanor offenses to be vacated by court order once the offender had completed all the terms of his or her sentence. The court is prohibited from vacating a record if: (1) the applicant has criminal charges pending; (2) the offense was a violent offense or an attempt to commit a violent offense; (3) the offense was a violation of driving under the influence (DUI) or other DUI related crimes; (4) the offense involved obscenity, pornography, or sexual exploitation of a child; (5) the offense involved domestic violence (unless certain conditions are met); (6) the applicant has been convicted of a new crime in Washington, another state, or in federal court since the date of conviction; (7) fewer than three years have passed since the applicant completed the terms of his or her sentence (except for domestic violence related misdemeanors); and (8) the applicant is currently restrained or has been restrained in the last five years by a domestic violence protection order, no-contact order, antiharassment protection order, or other civil restraining order.

A record is vacated by the court by (a) permitting the applicant to change their plea from guilty to not guilty; (b) setting aside the guilty verdict; or (c) dismissing the information or indictment against the offender and vacating the judgments and sentences.

Vacated Misdemeanor and Gross Misdemeanor Records

Following the vacation of a criminal record, the applicant may state he or she has never been convicted of that crime for all purposes, including employment applications. The order vacating the conviction will be transmitted to the Washington state patrol and local law enforcement to ensure the records reflect the order to vacate. The conviction record cannot be disclosed to anyone except criminal justice agencies and may not be used as "criminal history" for purposes of sentencing for a subsequent offense. However, the prior conviction may be used in a later prosecution.

Sealed Records

Courts may seal court files or records pursuant to statute or court rule. Washington Court General Rule 15 (GR 15) authorizes the court to seal records when authorized by statute or when compelling circumstances are shown. When a record is sealed, it is protected from examination by the public or nonauthorized court personnel. If the file is a paper or microform document, this is done by placing a seal on the file that must be broken in order to gain access. If the file is computerized, it is sealed by limiting access only to authorized court personnel.

Compelling Circumstances as Justification for Sealing Records

In the case of *Personal Restraint Petition of Gentry*, the Washington Supreme Court stated that the requirement of compelling circumstances for sealing records is mandated by the Washington Constitution's requirement for open administration of justice (Article I § 10). Allowing sealing of records without compelling circumstances may raise constitutional issues. No case law is directly on point regarding whether less than compelling circumstances can be demonstrated when sealing records pursuant to state statute. However, case law suggests that at a minimum, courts will conduct some analysis that would include consideration of the need for sealing the record weighed against the public's interest in open access to the files.

Summary of Bill:

When a conviction record is vacated by a court, the court may seal the file without a demonstration of compelling circumstances. The order to seal may provide for the deletion of the applicant's name in the case index to be substituted with his or her initials.

The prohibition of permitting the vacation of records of applicants who have had the record of another conviction vacated is removed. A subsequent conviction is only a bar to having a conviction vacated if fewer than three years have passed since the person completed the terms of the sentence for the new offense.

The bill makes several technical corrections to the current statute, specifically changing terms from singular to plural.

Appropriation: None.

Fiscal Note: Requested on February 9, 2005.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.